IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 735 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

RAYSING LALSING DARBAR & ANR

Versus

STATE OF GUJARAT

Appearance:

Shri B.N. Patel, Advocate, for the Appellants-accused

Shri M.A. Bukhari, Addl. Public Prosecutor, for the Respondent-State

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 04/11/96

ORAL JUDGEMENT

The original accused have invoked the appellate jurisdiction of this Court under sec. 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief) against the judgment and order of conviction and sentence passed by the learned Special and Additional Sessions Judge of

Banaskantha at Palanpur on 12th July 1994 in Special Case No. 170 of 1992. Thereby appellant-accused No.1 has been convicted of the offences punishable under sec. 333 and sec. 186 of the Indian Penal Code, 1860 (the IPC for brief) and also under sec. 135 of the Bombay Police Act, 1951 (the B.P. Act for brief) and also under sec. 3(1)(x) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Atrocities Act for brief) and sentenced him to rigorous imprisonment for 5 years and fine of Rs. 1000 in default simple imprisonment for 6 months for the offence punishable under sec. 333 of the IPC, rigorous imprisonment for one month and fine of Rs. 100 in default simple imprisonment for 15 days for the offence punishable under sec. 186 thereof and rigorous imprisonment for one month and fine of Rs. 100 in default simple imprisonment for 15 days for the offence punishable under sec. 135 of the B.P. Act and rigorous imprisonment for one year and fine of Rs. 200 in default simple imprisonment for one month for the offence punishable under sec. 3(1)(x) of the Atrocities Act. The substantive sentences were ordered to run concurrently. The learned trial Judge also convicted appellant-accused No.2 of the offence punishable under sec. 332 and sec. 186 of the IPC and under sec. 3(1)(x) of the Atrocities Act and sentenced him to rigorous imprisonment for 6 months and fine of Rs. 200 in default simple imprisonment for one month for the offence punishable under sec. 332 of the IPC and rigorous imprisonment for one month and fine of Rs. 100 in default simple imprisonment for 15 days for the offence punishable under sec. 186 thereof and rigorous imprisonment for one year and fine of Rs. 200 in default simple imprisonment for one month for the offence punishable under sec. 3(1)(x) of the Atrocities Act. The substantive sentences were ordered to run concurrently.

2. The facts giving rise to this appeal move in a narrow compass. It is the case of the prosecution that complainant Amichand Moolabhai Parmar was serving as a Head Constable in Bhabhar at the relevant time. He belongs to the scheduled caste. He was assigned the work of serving a bailable warrant to one Fatesinh Prabhatsinh Darbar. Apropos, he appears to have set out from his police station in Bhabhar town at about 4 p.m. on 21st June 1992. He is stated to have gone to Darbarvas in the town for execution of the aforesaid bailable warrant. He is stated to have reached thereat at about 5.15 p.m. It is the prosecution case that thereat he came across the appellants-accused. They abused him and called him names. They further abused him by calling his caste

names. He was also beaten by them with a stick and fisticuffs. He sustained several injuries including a fracture in his left wrist. He thereupon went to the police station and gave his complaint of the incident. It is at Ex. 37 on the record of the trial court. The Police Sub-Inspector of that police station examined as prosecution witness No. 10 at Ex. 43 on the record of the trial court investigated into the offences alleged to have been committed by the appellants-accused in the complaint. On conclusion of the investigation, the necessary charge-sheet was submitted in the Special Court of Banaskantha at Palanpur charging the appellants-accused with the offences punishable under sections 333, 186, 504 and 114 of the IPC and sec. 135 of the B.P. Act and sec. 3(1)(x) of the Atrocities Act. That charge-sheet was received in the Special Court on 16th September 1992. It came to be registered as Special Case No. 170 of 1992. The charge against the appellants as the accused was framed on 15th December 1993. Neither appellant-accused pleaded guilty to the charge. They were thereupon tried. After recording the prosecution evidence and after recording the further statement of each appellant-accused under sec. 313 of the Cr.P.C. and after hearing arguments, by his judgment and order passed on 12th July 1994 in Special Case No. 170 of 1992, the learned Special and Additional Sessions Judge of Banaskantha at Palanpur convicted and sentenced the appellants-accused as aforesaid. The aggrieved accused have thereupon invoked the appellate jurisdiction of this Court by means of this appeal under sec. 374 of the Cr.P.C. for questioning the correctness of their conviction and sentence by the learned trial Judge.

3. Learned Advocate Shri Patel for the appellants-accused has taken me through the entire evidence on record in support of his submission that a false case came to be filed against the appellants-accused. In any case, runs the submission of learned Advocate Shri Patel for the appellants-accused, the prosecution could not be said to have brought the guilt home to the appellants-accused beyond any reasonable doubt. As against this, learned Additional Public Prosecutor Shri Bukhari for the respondent-State has submitted that the evidence on record is clear enough to enable the court to fasten the guilt to the appellants-accused. He has further submitted that the learned trial Judge has carefully examined and appreciated the evidence on record and the finding of guilt as recorded by the learned trial Judge based on the material on record is unimpeachable. Learned Additional Public Prosecutor Shri Bukhari for the respondent-State

has further urged that the impugned judgment and order of conviction and sentence passed by the learned trial Judge calls for no interference by this Court in this appeal.

4. The complainant in this case has been examined as prosecution witness No. 8 at Ex. 36 on the record of the trial Court. He has stated in his evidence that he did not know the appellants-accused prior to occurrence of the incident. He has further stated that he gathered their names on inquiry with people residing in that area after occurrence of the incident. That appears to be the reason why he has named them in his complaint at Ex. 37 on the record of the trial Court. This assertion on his part is somewhat doubtful. According to him, he was severely beaten and he sustained serious injuries near his left eye and in his left wrist resulting in fracture. The moot question at this stage would be whether or not he was in a position to inquire with people residing in that area about the names of his assailants. The injuries sustained by him would certainly be quite painful needing immediate medical treatment. Instead, what he wants the court to believe is that he made inquiries with some people in the area to know the names of his assailants.

5. It may be assumed that he did so and that is how he could give their names in his complaint at Ex. 37 on the record of the case, because, as a police official, he would like to go to the police station first to launch his complaint before going to a medical officer for treatment of his injuries. In his oral testimony at Ex. 36 on the record of the trial Court, he has clearly stated that the appellants-accused also did not know him. If that be so, it would surprise anyone as to how they came to know that he belonged to the scheduled caste and they called him his caste names.

6. It clearly transpires from his oral testimony at Ex. 36 on the record of the trial Court that he was at the relevant time working in the police station at Bhabhar as Head Constable for 4 1/2 years. Bhabhar is not a very big town. At the most it might be a big village. Acquaintance of a police official with certain village people and vice-versa cannot altogether be ruled out. In that view of the matter, it is difficult to believe that the complainant did not know the appellants-accused prior to occurrence of the incident in question. That version is not easily palatable. The fact that no identification parade was held would lend support to my aforesaid conclusion.

7. At this stage it may be mentioned that police witnesses are not rustic witnesses. The time sense of rustic witnesses may not be accurate and precise. That cannot be said qua police people. They have to be accurate, exact and precise in recording timings about their work. The complaint at Ex. 37 on the record of the trial Court nowhere mentions the time of its recording. It does not become clear from the material on record whether any first information report in the prescribed form was prepared on the basis of the complaint at Ex. 37 on the record of the trial Court. It would have been better if the prosecution had brought it on record if it was actually prepared. That would have furnished the clue about the time of recording the complaint. The complainant in his oral testimony at Ex. 36 on the record of the case states that he gave his complaint of the incident in question at about 6.45 p.m. on that very day on 21st June 1992. The Police Sub-Inspector examined as prosecution witness No. 10 at Ex. 43 states that he was on duty at about 6 p.m. on that day and the complainant gave his complaint and it was taken down. It would mean that the complainant gave his complaint soon after 6 p.m. on that day. Either the complainant is not correct in giving the correct time of his complaint or the Police Sub-inspector at Ex. 43 has not given the correct time of recording the complaint.

8. The panchnama of the scene of offence is at Ex. 22 on the record of the trial Court. It is shown to have been drawn between 6.45 p.m. and 7.15 p.m. It transpires therefrom that the complainant showed the scene of offence to the police. If, according to the complainant, his complaint was given at 6.45 p.m., the drawal of the panchmama could never have taken place at that very time. Some time would obviously be consumed in recording the complaint and in sending for panch witnesses and in reaching the scene of offence. As transpiring from the complainant's oral testimony at Ex. 36 on the record of the trial Court, the scene of offence from the police station was not very near. He is stated to have left the police station at about 4 p.m. for execution of the bailable warrant in question and he is stated to have reached the place of service of warrant at about 5.15 p.m. taking the time of nearly 1 hour and 15 minutes for reaching the supposed destination for the purpose. If the complaint was given by the complainant at 6.45 p.m., it would have certainly taken some 30-45 minutes for the police party together with the panch witnesses to reach the scene of offence. In that case, the panchnama could never have been begun to be drawn at 6.45 p.m. soon after the complaint was given. The

learned trial Judge has explained this discrepancy by attributing some error or mistake in recording the timings in the panchnama. It is nobody's case that there was some error or mistake in recording the timings for drawl of the panchnama at Ex. 22 on the record of the trial Court. It was not necessary for the learned trial Judge to have made out an unwarranted case against the appellants-accused by so supposed error or mistake in recording of the timings in the panchnama.

9. The complainant was sent to the Medical Officer of the Primary Health Centre at Bhabhar for examination and treatment with a police yadi. It is at Ex. 14 on the record of the trial Court. It appears that the complainant went to the Medical Officer with a police yadi at about 7 p.m. on that day as transpiring from the police yadi at Ex. 14 on the record of the case. The Medical certificate issued by the Medical Officer is at Ex. 15 on the record of the case. That also shows that the complainant reached the Primary Health Centre at 7 p.m. on that day. The panchnama at Ex. 22 shows the presence of the complainant throughout the drawl of the panchnama. Even at the cost of repetition, it may be reiterated that it was drawn between 6.45 p.m. and 7.15 p.m. It would mean that the complainant was in the Primary Health Centre and at the scene of offence at the same time at 7 p.m. That is simply impossible. It is possible only if he had his duplicate. That is not the prosecution case. The complainant in his oral testimony at Ex. 36 on the record of the case states that he went to the Primary Health Centre on that day at about 8.30 p.m. This discrepancy in the time factor in this case has not been properly appreciated by the learned trial Judge.

10. It appears that the Medical Officer of the Primary Health Centre thought it fit to refer the case to the Community Health Centre at Radhanpur for better and further treatment of the complainant's injuries. He is stated to have gone thereat at 10 a.m. the next day on 22nd June 1992. The doctor appears to have certified his injuries to be fresh. In his oral testimony at Ex. 9 on the record of the trial Court the Medical Officer of the Community Health Centre at Radhanpur has stated that by fresh injuries he meant occurrence of injuries about 2-3 hours before. If the injuries found on the person of the complainant were fresh so as to mean that they had occurred 2-3 hours before as stated by the Medical Officer at Ex. 9, the incident could have occurred at 7 a.m. on 22nd June 1992 and not at 5.15 p.m. on the previous day on 21st June 1992 as stated by the

complainant in his oral testimony at Ex. 36 and in his complaint at Ex. 37 on the record of the case. Besides, the Medical Officer of the Primary Health Centre at Bhabhar has not mentioned anything about the nature of injuries whether they were fresh or otherwise. He has not given any colour of the injuries found on the person of the complainant. The Medical Officer at Ex. 13 has clearly admitted that the colour of injuries would be relevant for the purpose of knowing the age thereof, that is, the time of occurrence thereof. It then becomes doubtful as to when the complainant received the injuries in question.

11. In view of the aforesaid discrepancies appearing on record, the complainant's case is shrouded in mystery. His version becomes doubtful as to occurrence of the incident in question. The Medical Officer at Ex. 9 on the record of the case has not ruled out the possibility of the complainant's sustaining such injuries on account of a fall while running. In that view of the matter, the case of the complainant is not free from doubt. The benefit of doubt has to operate in favour of the accused according to well-settled principles of criminal law. In that view of the matter, there is no hesitation in coming to the conclusion that the prosecution has not been able to bring the guilt home to the appellants-accused beyond any reasonable doubt. The impugned judgment and order of conviction and sentence cannot therefore be sustained in law. It has to be quashed and set aside.

12. I am informed that appellant-accused No.1 has been languishing in jail serving the sentence imposed on him by the learned trial Judge. Appellant-accused No.2 has been on bail. Appellant-accused No.1 therefore deserves to be released forthwith if no longer required in any other case.

13. In the result, this appeal is accepted. The judgment and order of conviction and sentence passed by the learned Special and Additional Sessions Judge of Banaskantha at Palanpur on 12th July 1994 in Special Case No. 170 of 1992 is quashed and set aside. Appellant-accused No.1 is ordered to be released forthwith if no longer required in any other case. The bail bonds furnished by appellant-accused No.2 are ordered to be cancelled. Direct service is permitted.
